

## Agenda

February 5, 1014

The City of Knoxville's commitment to improving the environment and water quality has never been stronger. Our goal today is to ensure that our shared goals with TDEC are met by building on our successes and improving our ongoing Stormwater program with an Individual Phase 1 NPDES Permit tailored to best fit Knoxville's unique needs.

1. Draft language is not based on 40CFR122.26 or the 2008 Reapplication
2. Clear Schedules for Implementation and Compliance (Part IV)
3. Protection of Threatened & Endangered Species
4. Total Maximum Daily Loads
5. Standardized Annual Report Form

1. **Draft language is not based on 40CFR122.26 or the 2008 Reapplication.** The rationale for the switch to the Phase 2 General Permit is documented in the Rationale section of the other Phase 1 permits as:  
*"The six minimum measures, as written by the EPA in the Phase 1 final rule (December, 1999, 40 CFR122.3), serve as the basis for NPDES permit conditions. These will form the backbone of the proposed permit requirements, as follows:"*
  - a. The six minimum measures are only part of the final rule for "small" phase 2 MS4s referenced at 40 CFR 122.34 that also warns "Your stormwater management program must include the minimum control measures described in paragraph (b) of this section unless you apply for a permit under 122.26(d)."
  - b. The Phase 1 rule was finalized in 1989.
  - c. The Phase 1 requirements are not listed at "40 CFR122.3", which is entitled "Exclusions". This section actually describes those operations that do not require NPDES permits.**Resolution:** Acknowledge that the city is a Phase 1 MS4 and base the permit on 40CFR122.26.
2. **Clear Schedules for Implementation and Compliance (Part IV).** Since 1996, the Phase 1 permit has included specific Stormwater Management Plan (SWMP) tasks and schedules that correlate directly to 40CFR122.26. The general permit narrative draft does not clearly define the permit requirements and has vague, implied tasks that are only included by reference to sources outside of the four corners of the permit (e.g. CWP IDDE Manual, Appendix Annual Report, TWRA/USFWA, EPA Scorecard, CWA, CFR, etc.)  
**Resolution:** The City will update and resubmit a Phase 1 permit Reapplication as part of the next annual report that will include an expanded SWMP with new programs. These improvements will include Green Infrastructure, Mitigation Banking, Owner/Operator Inspections, and other tasks that are beneficial for improving water quality and to compensate for almost two permit cycle updates that were lost due to expired permits. All permit requirements will be defined in a SWMP table with an associated schedule.
3. **Protection of Threatened & Endangered Species.** The current draft is not protective of T&E species and postpones the actual evaluation of the SWMP to well after the permit is issued for implementation or continued implementation of the NPDES program.
  - a. TDEC never analyzes the SWMP to determine if it is protective of T&E species or critical habitat. This task is deferred to the City and to other third parties.
  - b. The 2010 EPA NPDES Permit Writer's Manual states that State issued permits are not subject to the federal T&E requirements.
  - c. The NPDES MOA between the State of Tennessee and the USEPA Region IV commits the Division to work with EPA and others to determine if permits are protective before the permit is issued.
  - e. Rule 0400-40-03-.06 (4) Defines Exceptional TN Waters to include any waters with Federally Designated critical habitat or non-experimental populations of state or federal T&E aquatic species. TDEC has not designated any Exceptional TN Waters within the City's jurisdiction.**Resolution:** Allow TDEC time to analyze the SWMP to determine if the proposal is protective before issuing the permit for public and other agency comments.
4. **Total Maximum Daily Loads.**
  - a. This language is circular in nature. The Permit requires compliance with the TMDL implementation schedule, which in turn references compliance with the NPDES permit.
  - b. Dates for BMP implementation are arbitrary and in some cases impossible for compliance. The TMDL acknowledges that implementation is a long-term process rather than a short term project.
  - c. The program is open ended and creates additional requirements automatically when new TMDLs are issued or modified.**Resolution:** Include the specific Phase 1 MS4 tasks for each TMDL within the body of the NPDES permit as part of the SWMP schedule.
5. **Standardized Annual Report Form.** The standardized report form doesn't match the requirements in the SWMP. Some tasks in the SWMP are not mentioned on the form while other tasks on the form are never mentioned in the SWMP. The standardized form was created for the General Phase 2 permit.  
**Resolution:** Maintain the current reporting requirement or edit the form to correlate exactly.